

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MELISA ARBINO,

Plaintiff,

Case No. 3:06 CV 40010

-vs-

O R D E R

JOHNSON & JOHNSON, et al.,

Defendant.

KATZ, J.

Upon consideration and adjudication of the Defendant's motion for certification, this Court hereby enters the instant order certifying the following questions of law to the Supreme Court of Ohio.

**STATEMENT OF FACTS**

This is a products liability action under Ohio law initiated by Plaintiff Melisa Arbino, a citizen and resident of Cincinnati, Ohio. She contends that shortly after she began using the Defendants' Ortho Evra Birth Control Patch, she sustained four blood clots, remains on blood-thinning medication, is precluded from using hormonal birth control and is subject to a high-risk pregnancy in the event she becomes pregnant.

Apart from her product liability claims her complaint also contains a claim for declaratory judgment regarding the constitutionality of Senate Bill 80. Plaintiff's prayer for relief includes compensatory and punitive damages in excess of an amount which satisfies this Court's jurisdictional requirements, but which seeks non-economic damages in excess of \$350,000 and punitive damages in excess of twice the compensatory damages. She also seeks a declaration that

the provision of Senate Bill 80 violates the Ohio Constitution and has moved for partial summary judgment on that precise issue.

The Plaintiff challenges specific provisions of S.B. 80, contending they are directly in conflict with Ohio Supreme Court precedent and are unconstitutional. Additionally, Plaintiff alleges that S.B. 80 as a whole violates the single subject rule and separation of powers provision under the Ohio Constitution.

The Supreme Court of Ohio ruled on similar tort-reform legislation, that contained in Amended Substitute House Bill 350, and deemed it unconstitutional in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999). In April 2005, Amended Substitute Senate Bill 80, a modified version of S.B. 350, became effective and in September 2005, Plaintiff amended her complaint herein to include a declaratory cause of action challenging its constitutionality. To date, the Supreme Court of Ohio has not had occasion to consider the constitutionality of S.B. 80.

#### **QUESTIONS OF LAW TO BE ADDRESSED**

Given these facts and the lack of controlling precedent in the decisions of the Ohio Supreme Court on question of Ohio law that may be determinative of this issue, this Court certifies the following questions to the Supreme Court of Ohio:

1. Is Ohio Revised Code § 2315.18, as amended by Senate Bill 80, effective, April 7, 2005, unconstitutional on the grounds as stated by the Plaintiffs?
2. Is Ohio Revised Code § 2315.19, as amended by Senate Bill 80, effective, April 7, 2005, unconstitutional on the grounds as stated by the Plaintiffs?

3. Is Ohio Revised Code § 2315.20, as amended by Senate Bill 80, effective, April 7, 2005, unconstitutional on the grounds as stated by the Plaintiffs?

4. Is Ohio Revised Code § 2315.21, as amended by Senate Bill 80, effective, April 7, 2005, unconstitutional on the grounds as stated by the Plaintiffs?

#### **NAMES OF PARTIES AND COUNSEL**

The Plaintiff is Melisa Arbino. Plaintiff's counsel is as follows:

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The Plaintiff/Intervenor is the State of Ohio. Plaintiff/Intervenor's counsel is as follows:

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The Defendants are Johnson & Johnson, Ortho-McNeil Pharmaceutical, Inc. and Johnson & Johnson Pharmaceutical Research and Development, LLC. The Defendants' counsel are as follows:

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**DESIGNATION OF MOVING PARTY**

Plaintiff is designated as the moving party.

**SERVICE**

In accordance with S. Ct. Prac. R. XVIII of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the United States District Court for the Northern District of Ohio, Western Division, is hereby directed to serve copies of this certification upon counsel for the parties and to file this certification order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

S/ David A. Katz  
DAVID A. KATZ  
U. S. DISTRICT JUDGE